

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 13910 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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RAJKOT MUNICIPAL CORPORATION
Versus
B.R.TRADING CO.

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Appearance :

MR RM CHHAYA for the Petitioner

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 20/10/2005

ORAL JUDGMENT

1. This Court issued rule on 13th September 2005, making it returnable on 22nd September 2005. The same though served, nobody appeared on behalf of the respondent. On 22nd September 2005, the matter was adjourned to 29th

September 2005 and thereafter, it was adjourned for today. Today also, when the matter is called out, nobody has appeared for the respondent.

2. The petitioner - original defendant is before this Court being aggrieved of order passed by the learned Judge, Small Causes Court, Rajkot below Exh.12 in Summary Suit No.103 of 2003 dated 11.01.2005.

3. The present petitioner had filed Exh.12 Application contending that the Summary Suit is not maintainable as the suit is filed for the rights accrued under a tender contract alleging the breach of certain conditions of the said contract.

4. Mr.R.M.Chhaya, learned advocate for the petitioner invited attention of the Court to contents of paragraph No.3 of Summary Suit No.103 of 2003 which refers to Column No.6 of the Tender Agreement, which provides that the plaintiff was under an obligation to pay the security deposit to the tune of Rs.5 lacs by a Demand Draft of a Nationalized Bank to the Rajkot Municipal Corporation and was further under an obligation to execute an agreement on a Stamp Paper of required amount.

5. Mr.Chhaya further submitted that as the work related

to removal of pipelines from 'Bhadar Dam', being of an urgent nature, Rajkot Municipal Corporation without waiting for the compliance of all necessary formalities entrusted the work to the party concerned and the plaintiff, who fulfilled the same. Thereafter, the final payment is also made after deducting the necessary amount towards the stamp, on which the agreement was required to be executed.

6. The plaintiff without filing the Regular Civil Suit and getting the rights adjudicated, has filed the Summary Suit which could not have been filed. That being so, Exh.12 application was required to be filed, wherein the learned Judge has passed an order holding that the Summary Suit is maintainable without appreciating that there is no amount which can be said to be recoverable, much less a liquidated demand in money payable by the defendant to the plaintiff.

7. In view of the aforesaid, this Court is prima facie of the opinion that Summary Suit is not maintainable. Without going deep into the matter, in the interest of justice order passed below Exh.12 is quashed and set aside and the matter is remanded to the learned Judge to decide the question of maintainability of Summary Suit

afresh, after taking into consideration all relevant material. Rule is made absolute accordingly with no order as to costs.

(RAVI R. TRIPATHI, J.)

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